

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Box Interference

Paper No. 20

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JOHN A. McDONALD, ANDREW P. SPICER
and MARY L. AUGUSTINE
Junior Party,¹

v.

MICHAEL J. BRISKIN
Senior Party.²

Patent Interference No. 104,197

CAROFF, DOWNEY and ELLIS, **Administrative Patent Judges.**

ELLIS, **Administrative Patent Judge.**

JUDGMENT PURSUANT TO 37 CFR § 1.662(a)

Upon consideration of the record, which includes:

¹ Application for Patent filed July 3, 1996, based on Application 08/675,499.

² Application for Patent filed April 22, 1996, based on Application 08/635,552.

1. the McDonald motion to substitute the count (Paper No. 16) and supplemental explanation (Paper No. 17);

2. the redeclaration of the interference substituting Count 2 for existing Count 1, and the designation of the claims corresponding to Count 2 (Paper No. 19);

3. the junior party, McDonald et al.'s, failure to make any showing why judgment on the record should not be entered against them;

a. McDonald has failed to file a preliminary statement and is, therefore, restricted to its effective filing date;

b. McDonald has filed only two preliminary motions under 37 CFR § 1.633, and the time allowed for such motions has expired; and

4. during a conference call with Mr. Woessner, counsel for McDonald, and Ms. Glovsky, counsel for Briskin, on November 4, 1999, Mr. Woessner agreed to the entry of an adverse judgment against McDonald with respect to those claims which have been designated as corresponding to Count 2;

and pursuant to 37 CFR § 1.662(a), **JUDGMENT** as to the subject matter of count 2 is hereby awarded to the senior party, MICHAEL J. BRISKIN. Judgment is herein entered against the junior party JOHN A. McDONALD, ANDREW P. SPICER, and MARY L. AUGUSTINE.

Accordingly, JOHN A. McDONALD, ANDREW P. SPICER, and MARY L. AUGUSTINE are not entitled to a patent containing claims 9, 10, 13, 16, 17, 20, 22, 23, 25-28, 31, 33-36, 39 and 46, corresponding to Count 2.

Interference No. 104,197

On this record, MICHAEL J. BRISKIN is entitled to a patent containing claims 1, 5, 6, 8-12 and 15-20, corresponding to Count 2.

MARC L. CAROFF)	
Administrative Patent Judge)	
)	
)	
MARY F. DOWNEY)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
JOAN ELLIS)	
Administrative Patent Judge)	

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Interference No. 104,197

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